



Paper No. 7

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OFFICE OF PETITIONS

In re Application of
Cubicciotti
Application No. 10/020,151
Filed: December 18, 2001
For: MODIFIED PHYCOBILISOMES
AND USES THEREFORE

**DECISION GRANTING
PETITIONS**

In re Application of
Cubicciotti
Application No. 10/109,040
Filed: March 29, 2002
For: MODIFIED PHYCOBILISOMES
AND USES THEREFORE

This is a decision on the petition filed April 14, 2002, which is being treated as a petition under 37 CFR 1.181, requesting, in effect, that the files of the above-identified applications be merged and the resulting application accorded a filing date of December 18, 2001. In addition, this petition will address the paper, filed April 19, 2002, entitled, "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS AND REQUEST FOR CORRECTED FILING RECEIPT." The April 19, 2002 correspondence will be treated as a petition under 37 CFR 1.181 to vacate the Notice to File Missing Parts of Nonprovisional Application, mailed April 1, 2002.

The petition under 37 CFR 1.181 to merge the above-identified application files is **GRANTED**.

The petition under 37 CFR 1.181 to vacate the Notice to File Missing Parts of Nonprovisional Application, mailed April 1, 2002, is **GRANTED**.

The original application papers were filed on December 18, 2001. However, applicant alleges that a review of the USPTO PAIR system on or about March 28, 2002 did not reveal that the Office had received the December 18, 2001 application. As a result, applicant filed duplicate application papers on March 29, 2002, which were assigned application No. 10/109,040 and a filing date of March 28, 2002. In support, the petition is accompanied by a copy of applicant's postcard receipt for the original papers showing a postmark of December 18, 2001. The papers filed on March 29, 2002 are clearly noted as a duplicate of the papers filed on December 18, 2001.

Based on the evidence supplied, it is concluded, in this particular case, that the duplicate application filed on March 29, 2002, was filed as a result of the delay by the Office in processing the original application papers. Therefore, it is appropriate to merge the files in order to correct the error.

The file of application No. 10/109,040 will be merged into the file of application No. 10/020,151. The petition under 37 CFR 1.181 to merge the two application files is granted.

Regarding the petition to vacate the Notice to File Missing Parts of Nonprovisional Application, mailed April 1, 2002, petitioner alleges that an oath or declaration was filed with the original application papers on December 18, 2001. In support, the petition is accompanied by a copy of applicant's itemized postcard receipt with an Office of Initial Patent Examination date stamp affixed thereto. The date stamp shows December 18, 2001 as the date of receipt. The postcard lists, *inter alia*, that the filing includes a declaration.

The return postcard constitutes *prima facie* evidence that declaration was filed on December 18, 2001. MPEP 503. Accordingly, the petition under 37 CFR 1.181 to vacate the Notice of April 1, 2002 is granted.

No petition fees have been or will be charged in connection with these two petitions.

The application is being returned to Office of Initial Patent Examination for further processing, using the copy of the oath or declaration resubmitted on April 19, 2002 and for merging the file of application No. 10/109,040 into the file of application No. 10/020,151. Application No. 10/109,040 will no longer be an active serial number. All future correspondence concerning this application should be directed to application No. 10/020,151, filed December 18, 2001. A corrected filing receipt will be mailed in due course.

Any inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.



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